

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

TAMEKA SHULER,)	
)	
Plaintiff-below/Appellant,)	
)	
v.)	Case No.: CPU5-21-001240
)	
PRICE PLUMBING, INC.,)	
)	
Defendant-below/Appellee.)	

Submitted: June 7, 2022
Decided: August 5, 2022

Tameka Shuler
147 N. Bayshore Dr.
Frederica, DE 19946
Plaintiff-below/Appellant

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Defendant-below/Appellee

FINAL DECISION AFTER TRIAL

Amalfitano, J.

PROCEDURAL HISTORY

This is an appeal from the Justice of the Peace Court that was timely filed pursuant to 10 *Del. C.* § 9571. On November 17, 2021, Tameka Shuler (hereinafter “Shuler”) filed a Complaint on Appeal against Price Plumbing, Inc. (hereinafter “Price Plumbing”) and Ray Price alleging she entered into a contract with Price Plumbing for rough-in plumbing work on her property. Shuler asserted Price Plumbing failed to meet its obligations under the contract, and as a result, she suffered damages in the amount of \$1,000.00.

On December 8, 2021, Price Plumbing and Ray Price filed an Answer and Counterclaim denying the substantive allegations, and asserting Price Plumbing performed the work, but Shuler neglected to make full payment as required by the contract. Price Plumbing submitted it suffered damages in the amount of \$1,900.00, plus interest and court costs.

On January 14, 2022, Shuler filed an Answer to Price Plumbing and Ray Price’s Counterclaim denying the substantive allegations and requesting this Court dismiss Price Plumbing and Ray Price’s Counterclaim.

On June 6, 2022, a trial was held in the matter. Before trial, Shuler voluntarily dismissed Ray Price from her Complaint. This Court heard testimony from the following individuals: Ray Price, owner of Price Plumbing; Shane Albert, Shuler’s contractor and friend; and Shuler. Both parties submitted documents into evidence. At the conclusion of trial, Shuler clarified she was voluntarily dismissing her claim against Price Plumbing in its entirety. Subsequently, this Court reserved its decision on Price Plumbing’s Counterclaim. This is the Court’s Final Decision and Order after consideration of the testimony and evidence submitted at trial.

FACTS

Based on the testimony and evidence presented at trial, the Court finds the relevant facts to be as follows:

Shuler is an owner of residential property located at 147 N. Bayshore Dr., Frederica, Delaware 19946 (hereinafter the “Property”). Price Plumbing is a Delaware corporation owned by Ray Price. In October 2020, the parties entered into an agreement that provided for a rough-in plumbing job at Property for a price of \$7,000.00. Pursuant to the executed agreement, Price Plumbing was required to complete rough-in plumbing or supply and install appurtenances necessary for a whole house plumbing system.¹ This included plumbing for a kitchen, laundry room, two bathrooms, powder room, water heater, wetbar on a back deck, and the installation of two hose bibs.² In accordance with the agreement, Shuler was responsible for the plumbing finishes, such as installation of the faucets and fixtures.³ On October 21, 2020, Shuler paid Price Plumbing \$4,500.00 to start the work, and agreed to pay the remaining \$2,500.00 upon completion and a passed inspection of the work.

Prior to commencement of the work, the parties walked through Property and Shuler indicated where the plumbing fixtures were going to go. Shuler laid out the placement for the installation of the rough-in plumbing. During the course of the rough-in work, the parties agreed to a change in performance. During the job, it was discovered that plumbing for the wetbar on the back deck could not be installed the way the parties originally contemplated due to the design structure of the front deck and elevator. The wetbar would need to be installed in a different place and would ultimately cost more due to the complexity and change in placement. The parties could

¹ Def.’s Ex. 1.

² *Id.*

³ *Id.*

not agree on the new placement and price, and as such, rough-in plumbing was not installed for a wetbar. Shuler was at the Property every single day overseeing Price Plumbing's work. Shane Albert, Shuler's friend and general contractor, was also at the Property looking over the rough-in job as it was being done.⁴

On November 20, 2020, upon completion of the rough-in work, an inspection was conducted and the work was approved. Subsequently, Price Plumbing sent Shuler a final invoice for its services.⁵ As the wetbar could not be installed, \$600.00 or the original agreed upon cost for its installation was taken off the final invoice.⁶

Thereafter, the parties arranged for Ray Price to pick up final payment at Property. When Ray Price arrived to pick up a check, Shuler confronted him about the quality of the rough-in work. Ray Price advised he was only there to collect a check for the completed work, not argue about its quality. Ray Price testified to avoid argument, he left the property without payment. Shortly thereafter, Shuler informed Price Plumbing she would no longer need its services.⁷

At trial, Shuler testified she was satisfied with the work done by Price Plumbing for the \$4,500.00 already paid, but argued she should not have to pay anymore. Further, Shuler clarified that while the rough-in work was passed by inspection, it was not done to her specifications. Particularly, Shuler testified Defendant failed to install a manifold or shut off valves as agreed upon. Ray Price represented shut off valves are a plumbing finish, not part of a rough-in job. Based on Ray Price's description of events, a manifold system was already installed prior to commencement of the job. Ray Price informed Shuler and her husband that a manifold system is

⁴ Shuler conducted a direct examination of Shane Albert who testified he was a general contractor who does finishing work. He also testified he has done plumbing work, but is not a certified plumber.

⁵ Def.'s Ex 1.

⁶ *Id.*

⁷ Pl.'s Ex 1.

substandard to the quality of pipe used by Price Plumbing. Ray Price testified Shuler and her husband instructed Price Plumbing to disassemble the existing manifold and install the system it would normally install. Ray Price testified, in accordance with their instruction, Price Plumbing disassembled the manifold and installed hot and cold water lines and capped off the pipes. Based on Shuler's description of events, no manifold system was previously installed. However, she conceded she would accept shut off valves in place of a manifold system.

Additionally, Shuler testified the rough-in work for the garage sink was not laid out where she wanted. Shuler testified the sink location hindered her ability to open her vehicle door and exit her vehicle once she was parked in the garage. Ray Price testified the installation was placed in accordance with her specific direction.

STANDARD OF REVIEW

In civil actions, the burden of proof is by a preponderance of the evidence.⁸ "The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists."⁹ As trier of fact, the Court is the sole judge of the credibility of each fact witness and any other documents submitted to the Court for consideration.¹⁰ If the Court finds that the evidence presented at trial conflicts, then it is the Court's duty to reconcile these conflicts—if reasonably possible—in order to find congruity.¹¹ If the Court is unable to harmonize the conflicting testimony, then the Court must determine which portions of the testimony deserve more weight in its final judgment.¹² In ruling, the Court may consider the witnesses' demeanor, the fairness and descriptiveness of their testimony, their ability to personally witness or know the facts

⁸ See *Gregory v. Frazer*, 2010 WL 4262030, at *1 (Del. Com. Pl. Oct. 8, 2010).

⁹ See *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

¹⁰ See *Nat'l Grange Mut. Ins. Co. v. Davis*, 2000 WL 33275030, at *4 (Del. Com. Pl. Feb. 9, 2000).

¹¹ See *id.*

¹² See *id.*

about which they testify, and any biases or interests they may have concerning the nature of the case.¹³

DISCUSSION

Under Delaware law, to recover on a claim for breach of contract, the plaintiff must establish “(1) a contract exists between the parties; (2) the defendant breached the terms of the contract; and (3) as a result, the plaintiff suffered damages.”¹⁴

“For a contract modification to be valid, both mutual assent and consideration must be present.”¹⁵ “Past consideration is not enough, and a party may not rely on a pre-existing duty as consideration.”¹⁶ “However, when a contract modification is fair and equitable based on circumstances not anticipated by the parties when the contract was made, or if justice requires enforcement of the modification because of material change of position in reliance on the promise, a modification may be binding.”¹⁷ “Furthermore, oral modifications of contracts are permitted, even if the contract limits modifications to those in writing.”¹⁸

It is undisputed a valid contract existed between the parties whereby Price Plumbing would perform rough-in plumbing work for Shuler at Property in exchange for a sum of \$7,000.00. Rather, the dispute lies in the performance and quality of the work and whether performance of a contract term was modified. Price Plumbing asserted it completed its obligations under the contract, and Shuler failed to pay in full. Shuler concedes she did not pay in full, but claimed Price Plumbing neglected to meet all of its obligations under the contract. The Court finds Price

¹³ See *State v. Westfall*, 2008 WL 2855030, at *3 (Del. Com. Pl. Apr. 22, 2008).

¹⁴ *Citibank (S. Dakota) N.A. v. Santiago*, 2012 WL 592873, at *1 (Del. Com. Pl. Feb. 23, 2012) (citing to *VLIW Tech., LLC v. Hewlett-Packard Co. STMicroelectronics, Inc.*, 840 A.2d 606, 612 (Del.2003)).

¹⁵ *Camden Fitness, LLC v. Wandless Enterprises, Inc.*, No. C.A. CPU5-12-000295, 2013 WL 8854873, at *5 (Del. Com. Pl. Feb. 11, 2013) (citing to *De Cecchis v. Evers*, 54 Del. 99, 174 A.2d 463 (Del. Super. Ct. 1961)).

¹⁶ *Id.* (citing to *Cont'l Ins. Co. v. Rutledge & Co., Inc.*, 750 A.2d 1219, 1232 (Del. Ch.2000)).

¹⁷ *Id.* (citing to Restatement (Second) of Contracts § 89 (1981)).

¹⁸ *Id.* (citing to *Pepsi-Cola Bottling Co. of Asbury Park v. PepsiCo, Inc.*, 297 A.2d 28, 32 (Del.1972)).

Plumbing performed all of the work for which it is requesting payment. The contract required Price Plumbing to complete a rough-in plumbing job, and that is what Price Plumbing did.

Shuler asserted Price Plumbing neglected to provide a manifold pursuant to the contract or shut off valves in its place. Shuler testified she agreed to accept shut-off valves in place of a manifold, as Ray Price expressed shut off-valves were better. Ray Price testified the installation of a manifold was never contemplated under the contract, as Price Plumbing simply does not install them. Ray Price testified manifolds were substandard to the quality of product and service it provides. Ray Price testified a manifold was already installed prior to Price Plumbing's work on the Property. Further, Ray Price testified any alleged manifold language present in the contract was in reference to the existing manifold system already installed at Property. Ray Price testified Price Plumbing disassemble the existing manifold and did the rough-in work for a shut off valve system in accordance with Shuler and her husband's instruction. Further, Ray Price testified Price Plumbing did not provide the shut-off valves, as that is not part of a rough-in job.

The Court finds Ray Price provided credible testimony with respect to the complexity of the rough-in job at Property, as well as the agreed upon performance between the parties. This Court finds Shuler failed to provide credible testimony with respect to her familiarity with plumbing work, and as to the agreed upon performance between the parties. Further, the Court finds Shuler's testimony failed to contradict Ray Price's expertise. While Shuler was argumentative and disruptive during Ray Price's testimony, she neglected to contradict Ray Price's testimony that Price Plumbing installed the rough-in plumbing work for a shut-off valve system. Accordingly, the Court finds Price Plumbing successfully met its obligation to install rough-in plumbing for shut-off valves and is due payment for this work.

Furthermore, Shuler vaguely advanced Price Plumbing failed to install some of the rough-in according to her specifications. Price Plumbing contended it did install the rough-in to meet all of her specifications and is entitled to final payment. Shuler made reference to rough-in plumbing in the garage that was not installed where she instructed. Particularly, she testified the sink fixture obstructed her ability to get out of her vehicle once she parked in the garage. She provided an obscure photograph depicting a portion of a garage with a vehicle parked inside and the vehicle door open next to pieces of drywall and a sink fixture. Unfortunately, the Court finds the photograph unsupportive of her testimony. In addition, Shuler testified she was at Property every day while Price Plumbing performed. If the work being done was not to her specifications or in accordance with what the parties agreed to, she should have notified Price Plumbing of the deficiencies. However, Shuler never did this, and in doing nothing, she acquiesced to the work that was done.

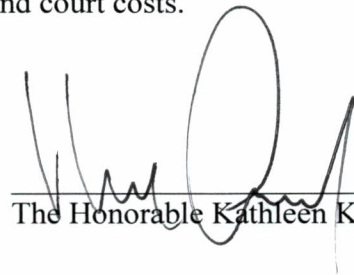
Notwithstanding Shuler's baseless claims that Price Plumbing failed to perform the work pursuant to her specifications, she did not refute that the rough-in plumbing passed inspection. In fact, Shuler admitted she was satisfied with the work performed. It became painstakingly clear to this Court that Shuler's true issue with Price Plumbing's performance was the wetbar installation, or lack thereof. However, the evidence indicates the wetbar could not be installed in the location and for the price the parties originally agreed upon. The parties did not contemplate an issue with the placement of the wetbar when the contract was formed; however, once it was discovered during the job that the placement and price was not possible, the parties agreed to omit the wetbar. When Price Plumbing subsequently sent Shuler its invoice for the outstanding amount owed on the contract, it reduced the original agreed upon price for the wetbar. As evidenced by the testimony and documents submitted at trial, the Court finds the parties mutually assented to the exclusion of

the wetbar rough-in installation. Furthermore, while this Court finds there was no consideration to support the aforementioned modification, given the circumstances unanticipated by the parties when the contract was formed, the Court finds the modification was fair based on the circumstances. Modification of contract terms are common and often necessary where unforeseen changes or conditions during property construction or renovation arise. Here, once it was discovered the wetbar rough-in could not be done in the place or for the price originally anticipated, the parties agreed to leave the wetbar rough-in out and Price Plumbing deducted the price from the invoice accordingly. Thus, the Court finds the contract modification fair and equitable based on the unanticipated circumstances.

CONCLUSION

For the reasons set forth herein, the Court finds in favor of Price Plumbing and awards damages in the amount of \$1,900.00, plus interest and court costs.

IT IS SO ORDERED.



The Honorable Kathleen K. Amalfitano